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June 15, 2000

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JUN 16 2000

VIA FEDERAL EXPRESS

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Suite TW-A325
Washington, D.C. 20554

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JUN 16 2000

FCC MAIL ROOM

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

99-200/

Re: Petition For Waiver of Number Reporting, Recordkeeping and Forecasting Requirements

Dear Ms. Salas:

Please find enclosed an original and four copies of Tennessee Telecommunications Association's Petition For Waiver of Number Reporting, Recordkeeping and Forecasting Requirements.

Please acknowledge the receipt of this Petition by stamping both the enclosed copy of this letter and the attached copy of the Petition, returning them to the undersigned in the enclosed self-addressed stamped envelope.

Should you have any questions with respect to the enclosed Petition, please do not hesitate to contact the undersigned at (615) 742-6244.

Very truly yours,

R. Dale Grimes

R. Dale Grimes

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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

JUN 16 2000

FCC JUN 16 2000

In the Matter of)

)

Numbering Resource Optimization)

)

CC Docket No. 99-200

**PETITION FOR WAIVER
 OF NUMBER REPORTING, RECORDKEEPING
 AND FORECASTING REQUIREMENTS**

Tennessee Telecommunications Association ("TTA" or "Petitioner"), pursuant to Section 1.3 of the Federal Communications Commission (the "Commission") Rules¹ and the Commission's invitation to apply for a waiver of certain new requirements,² respectfully submits this petition for waiver of the Commission's new recordkeeping, reporting, and forecasting requirements regarding numbering resource optimization, as embodied in the Commission's March 31, 2000 Report and Order and Further Notice of Proposed Rule Making (the "Order"),³ as follows:

INTRODUCTION

1. TTA is a Tennessee not-for-profit corporation with its principal place of business in Nashville, Tennessee. It is a trade association the membership of which is open to all telecommunications providers certificated to operate in Tennessee.

¹ 47 C.F.R. § 1.3 (2000).

² In the context of its discussion in the Order of the burden on non-NLP capable rural carriers, the Commission expressly indicated a willingness to "entertain waiver requests, including joint waiver requests" with respect to the maintenance of subcategory data. Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, F.C.C. 00-104 (rel. March 31, 2000) [hereinafter Order], ¶ 62.

³ See generally id.

2. This Petition is filed on behalf of the following members of TTA, all of whom provide local exchange carrier services in Tennessee: Ardmore Telephone Company, Inc., Ben Lomand Rural Telephone Cooperative, Inc., Bledsoe Telephone Cooperative, CenturyTel of Adamsville, Inc., CenturyTel of Claiborne, Inc., CenturyTel of Ooltewah-Collegedale, Inc., Concord Telephone Exchange Co., Crockett Telephone Co., Inc., DeKalb Telephone Cooperative, Inc., Highland Telephone Cooperative, Inc., Humphrey's County Telephone Co., Loretto Telephone Company, Inc., North Central Telephone Cooperative, Peoples Telephone Company, Inc., Tellico Telephone Co., Tennessee Telephone Co., Twin Lakes Telephone Cooperative Corporation, United Telephone Company, West Kentucky Rural Telephone Cooperative Corporation, Inc., West Tennessee Telephone Co., Inc., and Yorkville Telephone Cooperative (collectively, the "Small Rural Carriers").

3. The Small Rural Carriers meet the definition of "rural" telephone companies under the Communications Act.⁴ None of the Small Rural Carriers is LNP capable.⁵ Each utilizes fewer than 100,000 access lines to provide telecommunications services to consumers within the State of Tennessee, and each has significantly limited financial and human resources by which to conduct ongoing telecommunications operations, meet new technical challenges, and comply with new data collection, reporting and forecasting requirements. In addition, the Small Rural Carriers face demands for new, more sophisticated services, and potential increased competition in the future from larger providers with greater financial resources.

⁴ Nothing herein is intended to affect the status of any requests to grant or terminate any exemptions, suspensions, or modifications of the provisions of 47 U.S.C. § 251.

⁵ See 47 U.S.C. § 153(37)(D).

4. Because of these conditions under which the Small Rural Carriers operate and the absence of any benefit from their compliance with the requirements, Petitioner seeks waiver of the following new requirements: (i) that carriers report five categories of numbers -- assigned, intermediate, reserved, aging, and administrative; (ii) that they maintain detailed, subcategorized internal records of telephone number resources in eight sub-categories; and (iii) that they semi-annually report number usage and forecast data. In addition, Petitioner respectfully requests that the Commission grant the Small Rural Carriers a further waiver of any other numbering resource administration rule or requirement that is granted to any other rural telephone company and extend such waivers to all similarly situated small, rural non-LNP capable carriers.

NEW REQUIREMENTS AS TO WHICH WAIVER IS SOUGHT

5. On June 2, 1999, the Commission issued a Notice of Proposed Rule Making on numbering resource optimization, acknowledging the existence of serious problems with the utilization of numbering resources and addressing the underlying causes of area code exhaustion.

6. On March 31, 2000, the Commission released the "Order" at issue.⁶ Among the requirements set forth in the Order with respect to numbering resource optimization recordkeeping and reporting, the Commission required that: (i) all carriers report five categories of numbers;⁷ (ii) carriers maintain detailed, subcategorized internal records of number usage;⁸ (iii) carriers semi-

⁶ See generally Order.

⁷ Id. ¶ 60 (the categories are: assigned, intermediate, reserved, aging and administrative) (to be codified at 37 C.F.R. § 52.15(f)(5)(i)).

⁸ Id. ¶ 62 n. 104 (the subcategories are: soft dialtone numbers, ported-out numbers, dealer number pools, test numbers, employee/official numbers, Local Routing Numbers, Temporary Local Directory Numbers, and wireless E911 emergency services routing digits/key (ESRD/ESRK) numbers) (to be codified at 37 C.F.R. § 52.15(f)(1)).

annually report number utilization and forecast data;⁹ and (iv) carriers provide data in support of any request for additional growth in numbering resources to prevent accumulation by carriers of excessive inventories.¹⁰

7. Commissioners Ness¹¹ and Furchtgott-Roth¹² issued Separate Statements, encouraging small, rural carriers to file petitions for waiver from the new requirements to the extent that such requirements would impose an undue burden on carriers that operate in areas in which there is low demand for new numbers. Commissioner Ness' Separate Statement, supported by Commissioner Furchtgott-Roth, provides clear rationale for waiver of the new data collection, reporting, and forecasting requirements with respect to the Small Rural Carriers: "We must recognize that reporting requirements impose a burden, especially on small, rural carriers. These carriers generally use few numbering resources, and therefore, are not a significant cause of number exhaust problems."¹³

8. Historic utilization growth in the Small Rural Carriers' territories, and expected growth in the future, have not had and will not have more than a negligible effect on the larger problem of number exhaust. The Small Rural Carriers primarily use NXXs that were assigned as many as five decades ago. In fact, out of the five current area codes in use in Tennessee, which have a total of 3,960 NXXs, the Small Rural Carriers utilize only 160 NXXs—approximately four percent of available NXXs. Over the next five years, the Small Rural Carriers in the aggregate forecast a

⁹ Id. ¶ 67 ("Each carrier shall submit to the NANPA forecast and utilization data on or before February 1, for the period ending on December 31, and on or before August 1, for the period ending on June 30 of each year") (to be codified at 37 C.F.R. § 52.15(f)(6)(i)).

¹⁰ Id. ¶ 104 (to be codified at 37 C.F.R. § 52.15(g)(3)).

¹¹ Id. at 142.

¹² Id. at 143.

¹³ Id. at 142 (Separate Statement of Commissioner Ness); accord id. at 143 (Separate Statement of Commissioner Furchtgott-Roth).

total need of only 20 additional NXXs – one-half of one percent of total available NXXs. The negligible projected growth of the Small Rural Carriers' operations does not warrant maintenance of excess number inventories, and in fact, such inventories are not maintained by the Small Rural Carriers.

9. None of the Small Rural Carriers currently maintain telephone numbering resource data by the eight required number subcategories. The Small Rural Carriers also do not currently maintain, nor have they ever maintained, records that would support reporting of the five major number categories. Moreover, the Small Rural Carriers generally track components of the reportable data using nonelectronic (i.e., paper form) means.

10. Rural telephone companies are already exempted from compliance with one part of the new rules and requirements for the administration of telephone numbers that were adopted by the Commission.¹⁴ Thus, the Commission recognized the significant adverse financial impact suffered by non-LNP capable rural telephone companies, such as the Small Rural Carriers, required to expend finite resources to adhere to new regulatory burdens.

STANDARD FOR GRANT OF WAIVER

11. The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.¹⁵ Waiver of a Commission rule is appropriate if: (i) the underlying purpose of the rule would not be served, or would be frustrated, by its application in a particular case and grant of the waiver is otherwise in the public interest; or

¹⁴ For example, a non-LNP capable rural telephone company will be permitted to report its telephone number utilization data at the NXX level, per rate center under the new rules rather than by thousand number block. Id. ¶¶ 42, 70 (to be codified at 37 C.F.R. § 52.15(f)(4)(ii)(B)).

¹⁵ WAIT Radio v. Federal Comm. Comm'n, 418 F.2d 1153, 1159 (D.C. Cir. 1969); see 47 C.F.R. § 1.3.

(ii) unique facts or circumstances would render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest and there is no reasonable alternative.¹⁶

REASONS SUPPORTING GRANT OF WAIVER

12. The burden imposed on the Small Rural Carriers by the subcategory recordkeeping requirement would be substantial and onerous. Requiring the Small Rural Carriers to establish databases of the subcategorized telephone numbering resource data would impose heavy financial and management burdens on the Small Rural Carriers, necessitating implementation of expensive additional information systems, as well as requiring them to incur significant software programming and consulting expenses, for the sole purpose of tracking numbering resource data by subcategory. No commercial benefit inures to the Small Rural Carriers in doing so, and no significantly useful benefits would be provided to NANPA, the Commission, or consumers.

13. Petitioner also asserts that the reporting by the Small Rural Carriers by category of telephone numbers would provide no benefit to the NANPA, the Commission, or consumers. The Commission stated the basis for reporting of five categories of numbers, namely that "these data are especially valuable to identify carriers that are holding excessive inventories of numbers and to facilitate reclamation of those numbers."¹⁷ Clearly, excess numbers cannot be transferred by non-LNP capable carriers, such as the Small Local Carriers. Therefore, collection and reporting of number utilization data by the Small Rural Carriers would provide no benefit, economic or otherwise, to any party.

¹⁶ Northeast Cell. Tel. Co., L.P. v. Federal Comm. Comm'n, 879 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. Federal Comm. Comm'n, 418 F.2d 1153 (D.C. Cir. 1969).

¹⁷ Id. ¶ 61.

14. The additional new requirement that each carrier submit a five-year forecast of its expected numbering requirements and utilization data on a semi-annual basis¹⁸ is unnecessary with respect to the Small Rural Carriers. While the new requirement may make sense for major carriers and other carriers operating in high number usage metropolitan areas, semi-annual utilization reporting and forecasting by small, rural carriers would have no beneficial effect on preservation of numbering resources because rural carriers use, and expect to use, significantly fewer numbering resources.¹⁹

15. In addition, the new requirement that all carriers provide detailed data in support of any request for additional growth in numbering resources would provide the Commission and NANPA with more than sufficient information²⁰ regarding number resource management and utilization by the Small Rural Carriers, obviating any need for or benefit from the new recordkeeping, reporting or semi-annual forecasting requirements.

16. The Order attempts to reduce the burden on Small Rural Carriers by permitting those that have had no change in utilization since their last report to refile their prior submission and indicate "no change."²¹ However, in reality this would not result in a significant reduction of the burden. Each of the Small Rural Carriers reasonably expects that it will assign at least one number in each reporting period. Therefore, this attempted solution fails to present a reasonable alternative

¹⁸ Id. ¶ 67 (to be codified at 37 C.F.R. § 52.15(f)(6)(i)).

¹⁹ See, e.g., id. at 71 ("rural carriers tend to use less number resources"); id., Separate Statement of Commissioner Ness, at 142 ("rural carriers . . . are not a significant cause of number exhaust problems").

²⁰ See id. at 121 (to be codified at 37 C.F.R. § 52.15(g)(3)). In requesting numbering resource growth, carriers are required to provide data regarding utilization for the preceding six months, a 12-month projection of monthly utilization and the current numbering resource utilization level for the rate center for which growth is sought. Id.

²¹ See id. ¶ 42.

to waiver of the new requirements because the assignment of even a single number during the reporting period would foreclose this option.

17. Adherence by the Small Rural Carriers to the new recordkeeping, reporting, and forecasting requirements embodied in the Order would result in the depletion of a significant amount of the Small Rural Carriers' limited resources, as well requiring the increased costs be passed along to their customers, without any corresponding benefit to NANPA, the Commission, or consumers. Consistent with the Commission's stated interest in balancing the need for data collection "against costs of collecting, providing, and analyzing it."²² Petitioner submits that the costs to the Small Rural Carriers and their customers of data collection, reporting, and forecasting would far outweigh any benefit that the data could provide because the Small Rural Carriers are not the source of numbering resource exhaust. Therefore, application of the recordkeeping, reporting, and forecasting requirements to the Small Rural Carriers would not serve the underlying purpose of the rules and would be contrary to the public interest. Accordingly, the Small Rural Carriers should be exempted from compliance with the terms of the new recordkeeping and reporting requirements under Northeast Cell. Tel. Co., L.P.²³ and WAIT Radio.²⁴

18. Alternatively and in addition, the Small Rural Carriers should be exempted from compliance with the terms of the new recordkeeping and reporting requirements under Northeast Cell. Tel. Co., L.P.²⁵ and WAIT Radio²⁶ because application of these new recordkeeping, reporting,

²² Id. ¶ 61.

²³ 879 F.2d at 1166.

²⁴ 418 F.2d 1153.

²⁵ 879 F.2d at 1166.

²⁶ 418 F.2d 1153.

and forecasting requirements would be unduly burdensome to the Small Rural Carriers, the financial burden of compliance with the new rules also would impose an inequitable impediment to their economic success, and there is no reasonable alternative to waiver of the new recordkeeping and reporting rules. Unlike larger and more sophisticated providers, the Small Rural Carriers can ill afford the substantial expense of compliance. In addition, there is no reasonable alternative to waiver of the new recordkeeping and reporting rules that would lessen the impact of compliance on the Small Rural Carriers to the extent that the burdens imposed thereby would cease to be onerous or inequitable. The Commission's suggestion that smaller carriers jointly design systems to share costs of reporting and data collection²⁷ is no solution. Divergent number management systems, transaction costs associated with synchronization of such systems, and the wide array of small, rural carriers with limited resources make this suggestion untenable. For all the foregoing reasons, a waiver is appropriate and should be granted.

CONCLUSION

19. Application of the new recordkeeping, reporting, and forecasting requirements to the Small Rural Carriers would be contrary to the public interest. Requiring adherence would be inequitable, unduly burdensome, and there is no reasonable alternative to waiver that would result in a less onerous burden. Therefore, Petitioner respectfully requests that the Commission grant their Petition on behalf of the Small Rural Carriers, extend to the Small Rural Carriers any other waiver of the rules or requirements adopted in the Order that the Commission grants to any other rural

²⁷ Order ¶ 72.

telephone carrier, and extend such waivers to all similarly situated small, rural non-LNP capable carriers.²⁸

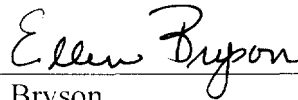
Respectfully submitted,

Date: June 15, 2000



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²⁸ The Commission has granted blanket waivers of its Rules to carriers satisfying appropriate conditions on the basis that such a grant serves the public interest by permitting the Commission to avoid the expenditure of resources on nearly identical requests by multiple carriers. See, e.g., Ameritech Operating Companies Petition for Waiver of Section 69.4(g) of the Commission's Rules, Mem. Op. and Order, 6 F.C.C. Rcd. 1541 (1991).